

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 206 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

KASHIRAM TEXTILES MILLS PVT LTD.

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Appearance:

MR MANISH R BHATT for Petitioner  
MR BD KARIA, WITH MR. RK PATE WITH MR KC PATEL for  
Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 17/12/98

ORAL JUDGEMENT

1. In its statement of case submitted by the Income Tax Appellate Tribunal, Ahmedabad Bench A, three questions have been referred to this court for its opinion arising out of appellate order in ITA No.

726/Ahd/81 for assessment year 1976-77. The two questions referred at the instance of revenue and another question referred to this court at the instance of assessee respectively are as under:

At the instance of CIT -

- "(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee could be said to be engaged in the business of manufacturing textiles?
- (ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to initial depreciation under Section 32(1)(vi) of the Income Tax Act, 1961?"

At the instance of assessee -

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the CIT could validly assume jurisdiction under section 263 of the I.T. Act, 1961 even when the assessment is framed under Section 143(3) read with Section 144A and Section 144B of the Act?"

2. The Tribunal has found that the business activity of the assessee at the material time consisted of purchase of gray cloth, colour, chemicals etc. and subjecting that cloth to bleaching, dyeing, printing, calendering, starching and then selling it as finished products like 'printed chhint' by claiming that the assessee is engaged in the business of manufacturing textiles and is entitled to claim deduction of initial depreciation under Section 32(1)(vii) of the Income Tax Act, 1961. The Tribunal had found that the activities which the assessee is carrying out does not amount to manufacturing activities and therefore assessee is not entitled to the claim of initial depreciation.

3. Both the learned counsel submitted that since the submission of statement of case, the issue is no more res integra. The Supreme Court in Ujagar Prints vs. Union of India and others 179 ITR 317 has held the activities which the assessee has found to be carrying on as activities amounting to manufacture. In that view of the matter, question No.1 and consequential question No.2

referred to us at the instance of revenue is to be answered in the negative, that is to say, in favour of the assessee and against the revenue by holding that the assessee on the facts found by the Tribunal must be held to be engaged in the business of manufacture of textiles and was entitled to initial depreciation.

4. In view of our answers to Question NO.1 and 2, the question raised and referred to at the instance of assessee has become of academic importance which we decline to answer.

No order as to costs.

(Rajesh Balia, J)

(A.R. Dave, J)